

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Vernon Lee Washington, #292064,)	C/A 3:05-2442-CMC-JRM
)	
Plaintiff,)	
)	
-versus-)	OPINION and ORDER
)	
Broad River Correctional Institution,)	
)	
Defendant.)	
)	

This matter is before the court on Plaintiff's *pro se* complaint seeking monetary damages from Defendants due to their alleged deliberate indifference to Plaintiff's alleged exposure to environmental tobacco smoke (ETS, commonly known as "second-hand smoke") in violation of 42 U.S.C. § 1983.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation. On August 30, 2005, the Magistrate Judge issued a Report recommending this matter be dismissed without prejudice and without issuance and service of process because Plaintiff has sued an entity under § 1983 that is not a "person" subject to suit under § 1983. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.¹

IT IS THEREFORE ORDERED that this matter is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 23, 2005

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¹The court notes that the Report and Recommendation includes a discussion of the recent Fourth Circuit case of *Anderson v. XYZ Corp. Health Svcs., Inc.*, 407 F.3d 674 (4th Cir. 2005). Even though Plaintiff's complaint states he did not file an inmate grievance, *see* Cmp. at 2, filed Aug. 22, 2005, the court would, in light of *Anderson*, hesitate in *sua sponte* dismissing this case if Plaintiff had named a proper defendant. *See Anderson*, 407 F.3d at 683 n.5 ("To determine whether an inmate has exhausted his administrative remedies requires an understanding of the remedies available and thus likely would require information from the defendant as well as the inmate.").